

RD AN No. 3500 (1965-E)
December 9, 1999

TO: State Directors, Rural Development Managers and
Community Development Managers
Rural Development

FROM: Eileen M. Fitzgerald
Acting Administrator
Rural Housing Service

(Signed by Eileen M. Fitzgerald)

SUBJECT: Prepayment Process for MFH Loans Made Between 1979-1989
and Others Which Have Unexpired Restrictive-Use Provisions

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance on how to process prepayment requests from Multi-Family Housing (MFH) borrowers who received section 514 or section 515 loans on which restrictive-use provisions are still in place. Note that these include section 514 and 515 loans made after December 21, 1979, and before December 15, 1989, section 514 loans made after December 14, 1989, and section 514 and 515 loans which have restrictive-use provisions as a result of a servicing action. Throughout the remainder of this AN, these loans will be referred to as "restricted" loans. RD Instruction 1965-E procedures on this topic are currently insufficient to fully implement the requirements of the Housing Act of 1949, as amended.

COMPARISON WITH PREVIOUS AN:

No previous AN has been issued on this subject.

IMPLEMENTATION RESPONSIBILITIES:

Before accepting an offer to prepay from a borrower with a restricted loan, the Rural Housing Service must first make a reasonable effort to enter into a new restrictive-use agreement with the borrower. Under this agreement, the borrower would make a binding commitment to extend the low-income use of the housing and related facilities for not less than 20 years, beginning on the date on which the new agreement is executed. While the Agency is statutorily prohibited from offering the borrower any incentives, the Servicing Office is to use its best efforts to enter into an extension of the restrictions with the borrower.

EXPIRATION DATE: December 31, 2000

FILING INSTRUCTIONS:
Preceding RD
Instruction 1965-E

If the borrower is willing to enter into such an agreement, the Servicing Office should have the borrower agree to the restrictive-use provision (RUP) of RD Instruction 1965-E, Exhibit A-3, and sign the restrictive-use agreement (RUA) outlined in Exhibit G-1. The Servicing Office should then take the appropriate steps to make the title of the real property subject to the RUP. When using Exhibits A-3 and G-1 for this purpose, the expiration date to be entered on these forms will be 20 years or more from the date on which the new RUP and RUA are executed, rather than the end of the original RUP and RUA as described on the forms.

If the borrower is unwilling to enter into a new RUP and RUA, the Servicing Office should document this fact in writing, noting the date on which this information was obtained. The document should be included in the casefile. The Servicing Office should then proceed to review the impact on minorities and the availability of affordable housing. Based on that review, borrowers may be permitted to prepay under the following conditions:

- A. Borrowers must agree to sell the project to a nonprofit or public body at the expiration of the current restrictive-use period by signing the RUP of Exhibit A-4 (Paragraph A) and the RUA of Exhibit G-2; or
- B. If there is no impact on minorities, but there is a need for the housing, borrowers must agree to either:
 - 1. Sign the RUPs of Exhibit A-3 to honor the remaining period of the current restrictive-use provisions and Exhibit A-4 (paragraph C) to protect tenants in the project at the end of the current restrictive-use period, and sign the RUAs of Exhibit G-1 and Exhibit G-4. The RUA of Exhibit G-4 will have an effective date beginning with the expiration of the Exhibit A-3 RUP, or
 - 2. Sign the RUP of Exhibit A-4 (paragraph A) and the RUA of Exhibit G-2; or
- C. If there is no impact on minorities and no need for the housing, the borrower must sign the RUP of Exhibit A-3 to honor the remaining period of the current restrictive use provisions and sign the RUA of Exhibit G-1.

Borrowers unwilling to sign additional restrictive-use provisions or agreements as outlined above will be required to either sell the property to a nonprofit organization or public body, or be denied their request to prepay.

Please direct any questions about this issue to the Office of Rental Housing Preservation. You may contact Larry Anderson at (202) 720-1611, Cynthia Reese-Foxworth at (202) 720-1940, or Cornelia Tietke at (202) 720-1173.